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CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELANDIN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:)	
Level Propane, Gases, Inc., et. al.)	Case No. 02-16172
)	
)	Ch. 11
)	
)	Hon. Randolph Baxter

**MOTION OF WILLIAM H. MALOOF TO DISQUALIFY DEBTORS' COUNSEL
PURSUANT TO 11 U.S.C. Sec. 327**

Now comes William H. Maloof, shareholder, by and through counsel undersigned and hereby moves the Court to disqualify Benesch, Friedlander, Coplan & Aronoff, LLP (BFCA), as appointed counsel for the Debtors and Debtors-in-Possession in light of the District Court's determination on August 16, 2007, in its Opinion in *Maloof v. Level Propane Gases, Inc. et al.*, Case No. 07-0153, Docket Item No. 19, that BFCA "were officers of the Court, representing the Bank Group." Your Movant further requests that any Order regarding his Motion to Disqualify Debtors' Counsel be made final and appealable pursuant to 28 U.S.C. Sec. 158.

BACKGROUND STATEMENT

This determination by the District Court that BFCA represented the Bank Group has stood unchallenged since August 16, 2007. Counsel for the Shareholder has brought this determination to the Court's attention in his Motion to Vacate, Docket No. 3140, as amended and his Amended Answer and Counterclaim in *WHM Emprises, Inc., et al. v. Maloof*, Case No. 07-1278, (U.S.B.C., N.D.O.), Docket Item No. 19. This Court has not

acted upon the determination on its own motion. The Court has previously overruled a Motion to Disqualify Debtors' Counsel, see Docket Item Nos. 3084 and 3085.

LAW AND ARGUMENT

Your Movant directs the Court's attention to the terms of 11 U.S.C. Sec. 327 that requires that any appointed professional be "disinterested." A "disinterested" party is defined in 11 U.S.C. Sec. 101(14)(e) as one who "does not have an interest materially adverse to the estate . . . by reason of any direct or indirect relationship to . . . the debtor . . . or for any other reason." Your Movant submits that BFCA as officers of the Court representing the Bank Group cannot possibly be disinterested under 11 U.S.C. Sec. 101(14)(e). This Court may take judicial notice that Deutsche Bank, LaSalle Bank, N.A., now Bank of America, and Provident Bank, now National City Bank, and their agent, BT Commercial Corp., known collectively as the Bank Group, were the creditors that forced the Debtors into Involuntary Bankruptcy and have maintained an adversarial posture in the subsequent Chapter 11 case since that time. Your Movant will not burden the record with a detailed reiteration of the events of this Chapter 11 Proceeding, but observe that the Bank Group is the Debtors largest creditor, that forced the Debtor into Chapter 7 proceedings at the outset. Because BFCA represents both the Debtors and their largest creditor they necessarily are in conflict of interest. This conflict of interest of BFCA is four-square with cases in this Circuit that have decided that professionals' conflict of interest precludes their appointment as counsel for a Debtor-in-Possession under 11 U.S.C. Sec. 327, see *In Re: Thompson* 54 B.R. 311 (U.S.B.C., N.D.O., 1985), *In Re: Gray* 64 B.R. 505 (U.S.B.C., E.D. Mi., 1986), *In Re: Roger J. Au & Son* 71 B.R. 238 (U.S.B.C., N.D.O., 1986) and *In re Georgetown of Kettering Ltd.*, 750 F.2d 536 (6th Cir. 1984). In each of these cases, the Debtor –

in-Possession sought appointment of professionals to assist it in its discharge of duties as Trustee, 11 U.S.C. Sec. 1107. In each instance, the professionals represented a creditor as well as the Debtor-in-Possession. In each instance the professional was disqualified because of its conflict of interest arising from the simultaneous representation of the Debtor-in-Possession and a creditor with a necessarily adverse interest. The outcome in this case should be no different now that it has been determined by the District Court that BFCA represents the Bank Group and that determination has been unchallenged indeed unquestioned since August 16, 2007.

CONCLUSION

In conclusion, for the reasons set forth above, Movant urges this Court to to disqualify Debtors' present Counsel, Benesch, Friedlander, Coplan & Aronoff, and to make its ruling a final and appealable order.

Respectfully Submitted,

/s/David C. Eisler
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SERVICE

I hereby certify that on this 21st day of January, 2008, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/David C. Eisler
David C. Eisler, Counsel for the Movant